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## LABOUR AND EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 28th March 2008

No.3764-li/1(J)-29/2005/LE. —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 17th November 2007 in Industrial Disputes Case No.8/2005 of the Presiding Officer, Labour Court, Jeypore to whom the industrial dispute between the Management of M/s. Risidia Service Co-operative Society Limited, Risidia, District-Kalahandi and its workman Shri Bailochan Sahu was referred for adjudication is hereby published as in the scheduled below:—

### SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE NO.8/2005

The 17th November 2007

*Present :* Shri G.K. Mishra, O.S.J.S. (Junior Branch)  
Presiding Officer,  
Labour Court, Jeypore  
Dist : Koraput

*Between:* Shri Prasanna Kumar Pattnaik,  
Secretary,  
Risidia Service Co-operative  
Society Limited, Risidia,  
At/P.O.- Risidia  
Dist: Kalahandi

.. First-Party—Management

*Versus*

Shri Bailochan Sahu  
S/o Bhajan Sahu  
At/P.O.- Risidia  
Dist :Kalahandi

At Present

At-Jharamunda  
P.O.-Karlamura  
Dist: Kalahandi

.. Second-Party—Workman

Under Section : 10 and 12 of the Industrial Disputes Act, 1947.

Appearances :	For the Management	.. Self
	For the Workman	.. Self
	Date of Argument	.. 12-11-2007
	Date of Award	.. 17-11-2007

1. The Government of Orissa in the Labour and Employment Department in exercise of the power conferred upon them under sub-section (5) of Section 12 read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their Order No. 9282(4) dated the 29th October 2005 for adjudication of the following disputes :—

#### SCHEDULE

“Whether the termination of services of Shri Bailochan Sahu, Ex-salesman-cum-Mind Bank Incharge by the Management of Risidia Service Co-operative Society Limited, Risidia, Kalahandi with effect from 24th September, 2004 is legal and/or justified ? If not to what relief is Shri Sahu entitled ?

#### AWARD

2. This is a case seems to have been originated out of the reference submitted by the Government for determination of an issue regarding the validity and justifiability of the termination effected by the Management in respect of the Workman coupled with other relief to be granted in consequence thereof.

3. The brief matrix of the case of the Workman may be described hereunder that though he was a regular employee working under the Management for a period of 18 years, he was terminated from the service showing to him to be a surplus and the principles of natural justice as incorporated in the Industrial Rule before termination of his service haveing not been complied with alongwith the principles of ‘first come last go’ the termination has been challenged on its illegality and as well as validity.

4. The Management on the contrary traversed the entire assertions put forth by the Workman contended *inter alia* that taking into consideration of the financial stringency as well as low productivity and non-ability of sufficient work a resolution was passed by the Management to terminate the service of the surplus employees by giving sufficient notice to that effect. The Workman being considered as a surplus employees was by virtue of the resolution was terminated from the service by giving one month notice to him. In this context the Management prays for dismissal of the case.

5. Before advertng to the factual aspect portaining to the issue in hand, it is trite to mention herewith that any Government, Co-operative Body, Agency or Private Sector has got unfattered authority to eliminate some of the employees from the service taking into consideration of the financial deplorability and low productivity of the establishment. Non-availability of sufficient work may be a ground for the cause of dis-engagement of the employees. It being a internal policy of the establishment should not be shrouded with any challenge. Care must be taken with great

circumspection before recouring to any action. The principle of natural justice with fair play must be resorted to at the very inception of adopting or implementing the decision of delimiting the staff of the establishment. The employees having accured with the right to work beset with right to livelihood, the service entertained by him can not be deprived of by issuing a simple notice. Statue has provided protection to the Workman already in the employment with security of his service. No one shall be deprived of his liberty and equality except without due process of law. Right to work is based upon the equality as enjoyed by other employees. The deprivation of such euality will violates the principles enumerated under Article 14 of the Indian Constitution. On that score provision of protection has been embodied under section 25 G & H of the Industrial Disputes Act. If a person or employee is likely to be removed from the service sufficient precaution may be given by the Management issuing one month notice or one month notice pay, as is convinient by the Management. The intention to terminate must be reflected in the notice in detail so as to make aware of the employee above the cause of his removal from his service. Moreover, while terminating from the service, the authority concerned must take care of the principle "first come and last go". In this connection the authority concerned is duty bound to prepare a list shown to be exhibited in a conspicuous place of the establishment being vouchsafed the endorsement of the District Labour Officer regarding the seniority of the workman working in the establishment. The principle that, first person employed must be abserved and last must be eliminated from the service. In the case of re-employment to be adopted consequence upon the vacancy arose the person eliminated as a last man in the seniority list must be abserved as a priority basis eliminating other conadidates as per the rule, provided such person is willing to join in the said post. The Managment should be circumspect on the matter laid down above before considering the termination on any employee on a special ground of financial stringency and non-avaliability of the work.

6. In lighth of the aforesaid analysis, it is pertained to discuss the factual aspect in order to arrive at a balance consideration on the issue in hand. As per the proposal given by the authority that is Registrar, Co-operative Society, the Management passed a resolution for eliminating the surplus employees working under the establishment. In the said resolution, the Workman was found to be surplus, no other employees were taken into consideration and formalities were ordered to be adopted while eliminating the Workman from his service. The Secretary of the society was entrusted by the committee to take action of the termination by complying necessary provision as enumerated in the Industrial Disputes Act. The Registrar, Co-operative Society also has given direction to follow principle of natural justice u/s. 25 'F' and 'G' of the relevant act. Though the resolution was passed on 12th April, 2005, the secretary on 20th August, 2004 issued a notice to the Workman showing his termination with effect from the date of issue. Another notice was issued by the president Risidia, a Co-operative Society on 24th September, 2004 finally terminating the service of the Workman. Mentioning the cause of termination as surplus employees. Though notice was priliminary issue on 20th April, 2004, the Workman was in fact not terminted from the service. He was finally terminated on 24th September, 2004. So the principle giving opportunity to the Workman seems to have been complied with properly by

the Management. The moot question as to whether the termination was on the principles of surplus or of his previous misconduct. It is alleged by the Workman that, the Management without any just cause terminated of his service and in his place a junior was also posted. As a matter of fact, a junior Workman namely, Shri G.Ch. Rana has been posted in place of the Workman, as shown in the counter filed by the Management. Shri G. Ch. Rana was previously terminated from the service and he was reinstated after the removal of the Workman. The re-employment of Shri G.Ch. Rana in place of the Workman is quite contrary to the resolution passed by the committee and in view of the direction given by the Registrar, Co-operative Society for reducing the strength of the employee taking into financial stringency and consideration. The back ground of the induction Shri G.Ch. Rana was clearly indicated in the counter statement on the score that, when the Workman was retrenched at the very inception on allegation, Shri G.Ch. Rana was replaced by him. Thereafter by the order of the Management the Workman was reinstated and appointed as a salesman in the establishment. There upon Shri G.Ch. Rana was also removed from the service. Taking the seniority it is found that the Workman is senior to such Shri G.Ch. Rana. The Management seems to have not prepared a list of seniority of the Workman in order to make aware of each Workman, their seniority and status. The induction of Shri G.Ch. Rana is based on no foundation which is contrary to the fair provision enumerated in the act. Further more if the reduction of the staff is taken to save the establishment from it's financial re-deplorability and loss how a step was taken by the Management to re-employ another per on in the place of the Workman. It seems that, there was availability of the work and no financial instability was experienced by the Management. After removing the staff further employment is prohibited without the permission of the higher authority and without giving any adequate reason how could the Management dare to employ another person depriving the valuable right of the Workman. There appears aparent reason on face of the record that the Management vindictively terminated the service. Prior to the termination from the service one letter was issued by the Management on 29th August, 2004 for initiation of disciplinary enquiry for his un-authorised absence. The intention to remove from the service was the foundation of pre-conceived plan and concerned effort of the Management. That is why the intention was culminated in the action of the removal in the guise of surplage. Where there was provision of re-employment on principle the induction of Shri G.Ch. Rana is illegal. Since there was no occassion for showing him as surplus. If therefore, re-employment was effected taking vacancy in existance the removal of the workman can not be considered being emerged out of surplus. The action of the Management is contrary to the resolution passed by the committee and the circular issued by the higher authority. Hence the termination of the Workman is illegal and without any foundatioun. It is found that, there was no non-availability of the Workman nor the establishment was experineced with any financial stringency. The Management having inducted Shri G.Ch. Rana without considering the right of the workman action taken by him is illegal and unjustified. The deprivation of the right of the Workman is un-warranted. The principles of 'first come last go' must be adhered to and consideration of the re-employment of the Workman must be effected. The issues are answered accordingly on contest.

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ORDER

The Management is directed to reinstate the Workman in his service replacing Shri G.Ch. Rana. No relief of back wages is ordered.

Dictated and Corrected by me

G.K. Mishra

dt. 17-11-2007

Presiding Officer,

Labour Court,

Jeypore

G.K. Mishra

dt. 17-11-2007

Presiding Officer,

Labour Court.

Jeypore

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By order of the Governor

P. MALLICK

Under-Secretary to Government